OCT 20 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 465

IN THE MATTER OF
CHICAGO RAPID TRANSIT COMPANY,
A CORPORATION,
DEBTOR.

CHICAGO JUNCTION RAILROAD COMPANY, A CORPORATION,
Petitioner,

vs.

A. A. SPRAGUE, BERNARD J. FALLON, TRUSTEES OF THE ESTATE OF THE CHICAGO RAPID TRANSIT COMPANY, A CORPORATION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

GEORGE WHARTON PEPPER,
SILAS H. STRAWN,
RALPH M. SHAW,
JOHN D. BLACK,
Attorneys for Petitioner.

THE DUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

INDEX.

	PAGE
Prayer for Writ	1
Summary and Short Statement of the Matter Involved	2
Facts from the Record	2
Statement of the Basis Upon Which It Is Contended That This Court Has Jurisdiction to Review the Decree in Question	6
The Questions Presented and Reasons Relied on for Allowance of the Writ	7
Questions Presented	7
Reasons for Allowance of the Writ	7
Supporting Brief	9
Opinions Below	9
Concise Statement of the Grounds on Which Jurisdiction of the Court Is Invoked	9
Statement of the Case	10
Summary of Argument	10
Argument	11
There Has Been No Effective Rejection of the Lease	11
The Bankruptcy Court Exceeded Its Jurisdiction	12
The Franchise May Not Be Disregarded by the Trustees	13
The Illinois Statute Law	15
Judgments Below Not Authorized by the Bankruptcy Act	16
The Ordinance and Lease Contract Are "in the Public Authority"	17
Conclusion	20

TABLE OF CASES.

Broad River Power Company v. South Carolina, 281 U. S. 537 14
City of Geneseo v. Illinois Northern Utilities Company, 378 Ill. 506 (1941) 7, 19
Farrington v. Tennessee, 95 U. S. 679, 689 13
Frost v. Corporation Commission, 278 U. S. 515 14
Gaston v. Rutland Railroad Company, 35 Fed. (2d) 685, 687 12
Palmer v. Massachusetts, 308 U. S. 79, 84-90 15
Trustees of Dartmouth College v. Woodward, 4 W. 518, 663 13

STATUTES AND ORDINANCE.

Chandler Act, Chapter X, Sec. 116 (U. S. C. A., Title 11, Sec. 516) 17, 18
Chandler Act, Chapter X, Sec. 216 (U. S. C. A., Title 11, Sec. 616) 17, 18
Illinois Revised Statutes, 1941, Chapter 111⅔:
Section 10 15
Section 27 15
Section 49a 15
Judicial Code, Section 65 (U. S. C. A., Title 28, Sec. 124) 15
Judicial Code, Section 240 (a); 28 U. S. C. A. 347 ..... 6, 9
Ordinance, City of Chicago, March 16, 1903 13
Section 77, Bankruptcy Act (U. S. C. A., Title 11, Sec. 205) 16
Section 77A, Bankruptcy Act (U. S. C. A., Title 11, Sec. 206) 16
Section 77B, Bankruptcy Act (U. S. C. A., Title 11, Sec. 207) 16
Section 77B (b) (6) 16, 17
Section 77B (c) (5) 17
Section 77B (e) (2) 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. .....

IN THE MATTER OF
CHICAGO RAPID TRANSIT COMPANY,
A CORPORATION,
Debtor.

CHICAGO JUNCTION RAILROAD COMPANY,
A CORPORATION,
Petitioner,

vs.

A. A. SPRAGUE, BERNARD J. FALLON, TRUSTEES OF THE ESTATE OF THE CHICAGO RAPID TRANSIT COMPANY, A CORPORATION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Chicago Junction Railroad Company, by George Wharton Pepper, Silas H. Strawn, Ralph M. Shaw, and John D. Black, its attorneys, respectfully prays that a writ of certiorari issue to review the decree of the United

States Circuit Court of Appeals for the Seventh Circuit, entered in the above entitled cause on June 30, 1942 (a rehearing of which was denied July 22, 1942), affirming the decree of the United States District Court for the Northern District of Illinois, Eastern Division, entered July 12, 1941.

Summary and Short Statement of the Matter Involved.

The Circuit Court of Appeals, in a proceeding under Section 77B of the Bankruptcy Act, has held that a debtor-lessee of a wholly intrastate railroad may disaffirm the lease but must continue to hold possession of the railroad and operate it; and may do so not only free of all liability for rent in arrear and for past and future use and occupation but may charge all operating deficits to the lessor.

This obviously unjust result calls for the exercise of the supervisory powers of the Supreme Court of the United States to determine whether the Bankruptcy Court has not exceeded the limits of its jurisdiction no matter how elastic that jurisdiction may be.

Facts From the Record.

Chicago Rapid Transit Company, Debtor, an Illinois corporation subject to the regulatory jurisdiction of the Illinois Commerce Commission (R. 3, 24) engaged in the transportation of persons for hire by electric railway, in intrastate commerce only, filed its petition in proceedings for reorganization January 22, 1937.

The Trustees appointed upon that date under the petition succeeded Receivers of the same company appointed June 28, 1932, by the District Court for the Northern District of Illinois, in an equity proceeding.

From the appointment of the Receivers to the present time, either the Receivers or the Trustees (Respondents here) have been in possession of and have operated the

properties of the Debtor; the order of appointment in this proceeding directed the Trustees to continue operation of the property, assets and business taken over from the Receivers; and the Trustees are still operating the property under such order and the later judgment order of July 12, 1941, which was affirmed by the Circuit Court of Appeals and which is the subject of this Petition.

Part of the Debtor's properties are an elevated railway structure leased to Debtor and owned by petitioner. This was built by petitioner, at a cost of about $2,240,000 (R. 246) under the authority of a certain franchise ordinance passed March 16, 1903, by the City Council of the City of Chicago. This ordinance, among other things, authorized the construction by petitioner of an elevated railroad, upon the express condition (R. 413) that from its completion it should be permanently operated by the South Side Elevated Railroad Company (Debtor's predecessor) under lease or other arrangement between said two companies as a part or parcel of the road of South Side Elevated Railroad Company.

The elevated railroad when completed was leased by petitioner to Debtor's predecessor as required by the ordinance (R. 241). For over thirty-five years the public has been served by the operation of this railroad, under this lease, and under the regulation of the Illinois Commerce Commission.

The Receivers after taking possession of this leased property on June 28, 1932, for a period of two years and two months paid petitioner the full rental due under the lease, then ceased payments.

May 26, 1936 (R. 40), petitioner petitioned the court for an order directing the Receivers to pay it the rent then past due. An answer was filed and a reference of the petition to a Special Master was had.

The Receivers thereafter paid no rent and took no action either to affirm or reject the lease.

May 13, 1937, about four months after the appointment of the Trustees, they filed a petition for an order (R. 25) requiring petitioner to modify and revise the terms of the lease by reducing the amount of rental due thereunder and thereafter required to be paid under the terms of the lease, to a reasonable amount to be determined by the court.

Over a year later, September 27, 1938, the Trustees filed an amendment to the petition (R. 30) the amendment also requiring this petitioner to modify and revise the terms of the lease by reducing the amount of rental then due thereunder and thereafter required to be paid under the terms of the lease, to a reasonable amount to be determined by the court; and, in the alternative, that Trustees be authorized to abandon the operation of the leased property, subject to the approval of the Illinois Commerce Commission, substituting such bus or other service, if any, as the Commission may require.

July 12, 1941 (R. 324), nearly three years later, the Trustees filed a second amendment to their petition which continued the prayer for an order requiring petitioner here to modify and revise the terms of the lease by reducing the amount of rental to a reasonable amount to be determined by the court, and, in the alternative, that Trustees be authorized not to adopt but to reject the lease by filing a written election so to do, and that the court authorize them, if necessary, to continue operation until the physical abandonment of the property is approved by the proper authority, but solely for the account and risk of petitioner, as lessor.

The Trustees never made an unequivocal request for authority to reject the lease.

The District Court entered a judgment July 12, 1941

(R. 338), directing that the Trustees file a written election not to adopt but to reject the lease, and ordering that petitioner is not entitled after the date of the institution of the reorganization proceedings to recover from the trust estate any of the rent reserved in the lease (R. 339). The order further provided (R. 340) that the Trustees, after filing said written election, shall continue operation of elevated railway service over the leased property "not for the account of the trust estate but only for the benefit and account of the Junction (petitioner here), and then only until said Trustees shall be duly authorized to cease operation by reason either of said Junction taking over said operation or the physical abandonment of such operations being duly authorized."

July 21, 1942 (R. 343), petitioner filed its written motion under Rule 52(b) of Civil Procedure to vacate and amend said judgment. This was denied (R. 358).

The case involves the validity of this judgment, involves the right of the District Court for the Northern District of Illinois to disregard the Illinois statutes regulating a wholly intrastate elevated railroad in Chicago, and in violation of such statutes to enter a judgment, without the consent and approval of the Illinois Commerce Commission, affecting the properties and the intrastate service of such railroad.

The case also involves the right of the District Court to disregard the provisions of Sections 77A and 77B of the Bankruptcy Act and wrongfully applies them to a wholly intrastate elevated railroad serving a public need, contrary to the provisions of such statutes.

It also involves the liability of the debtor estate and its Trustees to pay rent in arrear, now in excess of $750,000, to petitioner under the lease of petitioner's entire properties, a wholly intrastate elevated railroad built in Chicago for the Debtor's predecessor lessee, and which petitioner

never had the right under the franchise authorizing its construction to operate.

It also involves the question whether the Receivers and Trustees of the Debtor in fact ratified and did not disaffirm the lease; and that petitioner is therefore entitled to recover the rent due under the lease.

It also involves the right of the District Court to confiscate petitioner's property by depriving it of its property and of its lease rentals and in addition to impose on petitioner the liability to pay to the debtor estate operating deficits, already aggregating nearly $800,000, and which will continue to be incurred: such liability being imposed on petitioner retroactively to February 1, 1937 (R. 339) on the theory that respondent's operations are in discharge of petitioner's duty of public operation. This duty does not exist; as petitioner's franchise, the ordinance of March 16, 1903, provided, as above pointed out, that the authority to petitioner to construct the elevated railroad was granted upon the express condition that it from its completion should be permanently operated by petitioner's lessee, as part of the road of petitioner's lessee.

Statement of the Basis Upon Which It Is Contended That This Court Has Jurisdiction to Review the Decree in Question.

The decree of the Circuit Court of Appeals was entered June 30, 1942 (R. 424). A petition for rehearing was filed within the time allowed by the rules of court (R. 441), and was overruled July 22, 1942 (R. 442).

Jurisdiction is invoked under Section 240(a), c. 229, Act of February 13, 1925; Section 1, 43 Stat. 938. 28 U. S. C. A., Section 347(a).

The Questions Presented and Reasons Relied on for Allowance of the Writ.

(1) The Circuit Court of Appeals has decided important questions of federal bankruptcy law which have not been, but should be settled by this court:

(a) Whether the power of the Federal Bankruptcy Court to authorize Trustees appointed under Section 77B to disaffirm a lease and terminate liability thereunder, may be exercised after the lapse of nine years (four and one-half years in equity receivership and four and one-half years in 77B) during which the receivers and subsequently the trustees did many things consistent only with affirmance of the lease.

(b) If we assume that the answer to (a) is in the affirmative, whether the power of the Federal Bankruptcy Court extends beyond the power to relieve the debtor of a burdensome lease and the payment of rent thereunder, and extends so far that in a proceeding upon debtor's petition for leave to abandon, the court may decree a *liability upon the lessor* for all operating deficits incurred by the trustees since their appointment and for any future operating deficits which they may incur.

(2) The Circuit Court of Appeals for the Seventh Circuit by affirming the District Court's decision in this case has decided an important question of local Illinois law in a way which conflicts with decisions of the State of Illinois, viz: that an operation of petitioner's property can be had on petitioner's account without approval of the Illinois public authorities. Under the recent ruling of the Illinois Supreme Court in *City of Geneseo* v. *Illinois Northern Utilities Company,* 378 Ill. 506 (1941), the Commission could not allow an independent operation on petitioner's account unless petitioner first should obtain a franchise from the City of Chicago permitting it to operate inde-

pendently. The decision is also in conflict with the order of the Illinois Commerce Commission entered October 3, 1934 (R. 413).

Petitioner has never received a certificate of convenience and authority from the Illinois Commerce Commission and as its franchise from Chicago was granted on the condition that its lessee (the predecessor of the respondent Trustees) should permanently operate the property as a part of the South Side Elevated System, it is clear that a separate operation of the petitioner's property for the account of petitioner not only frustrates the rule of the Geneseo case, but ignores the authority of the Illinois Commerce Commission.

(3) The petitioner has no standing before the Illinois Commerce Commission to request leave to abandon the lease: its franchise from the City of Chicago under the ordinance is a contract between the City and petitioner. The Commission could not change the terms of this contract, except with the consent of both parties.